

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

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REDTAIL INTERNATIONAL, LLC, a
Minnesota limited liability company

Plaintiff,

v.

HOODLUMS WELDING HOODS, LLC,
a California limited liability company,

Defendant.

Case No.:

CLERK, U.S. DIST. COURT
ST. PAUL, MN

**COMPLAINT FOR
DECLARATORY JUDGMENT
(Demand For Jury Trial)**

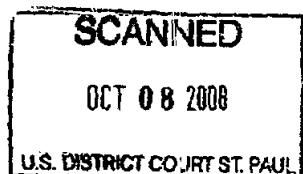
Pat. # D425,260
7,346,972

Comes now Plaintiff, Redtail International, LLC ("Redtail") and for its Declaratory Judgment Complaint against Defendant Hoodlums Welding Hoods, LLC ("Hoodlums") state as follows:

INTRODUCTION

1. This action is for a declaratory judgment that Plaintiff has not infringed U.S. Patent No. D425,260 ("the '260 patent") and for a declaratory judgment that U.S. Patent No. 7,346,972 ("the '972 patent") is invalid. See U.S. Patent Nos. D425,260 and 7,346,972 (collectively the "Asserted Patents") attached as Exhibits A and B, respectively.

2. This action is for a declaratory judgment that Plaintiff has not infringed U.S. Copyright Registration No. VA970-096 ("the 970-096 Copyright"), United States Copyright Registration No. VA1-024-536 ("the 1-024-536 Copyright"), United States Copyright Registration No. VA1-043-737 ("the 1-043-737 Copyright"), and United States Copyright Registration No. VA1-043-738 ("the 1-043-738 Copyright") (collectively "the Asserted Copyrights") attached hereto as Exhibits C, D, E, and F, respectively.



3. This complaint arises out of Hoodlums' recently filed Missouri lawsuit asserting infringement of the Asserted Patents and the Asserted Copyrights against Plaintiff. Although neither Redtail nor Hoodlums have offices in Missouri, and none of the members of either party reside in Missouri, Hoodlums brought suit in the United States District Court for the Eastern District of Missouri alleging that Redtail resides in that district because it operates an interactive web site which is directed to residents of the Eastern District of Missouri. On information and belief, Hoodlums filed suit in this fashion for the sole purpose of preventing transfer under 28 U.S.C. §1404 to a more convenient and expeditious forum, such as Minnesota.

4. Contemporaneous with this suit, Plaintiff intends to seek a transfer of the Redtail case from Missouri to Minnesota, and then consolidate it with the present suit.

THE PARTIES

5. Redtail is a Minnesota limited liability company with a principal place of business at 5350 North Highway 61, Suite 2, White Bear Lake, MN 55110.

6. Redtail is a distributor of welding hoods.

7. Upon information and belief, Hoodlums is a California limited liability company, with a principal place of business at 1727 Van Tress Avenue, Wilmington, CA 90744.

8. On information and belief, Hoodlums manufactures and distributes welding hoods.

9. Hoodlums claims to be the owner of all right and title to the Asserted Patents and the Asserted Copyrights.

JURISDICTION AND VENUE

10. The Court has subject matter jurisdiction over this cause of action pursuant to 28 U.S.C. §§ 1331, 1338, 2201 and 2202, and Fed. R. Civ. Proc. 57.

11. On information and belief, Hoodlums is subject to personal jurisdiction in this judicial district for the actions alleged in this Complaint.

12. Venue is proper in this district pursuant to 28 U.S.C. § 1331.

FACTUAL BACKGROUND

13. On June 20, 2008, Hoodlums filed a Complaint in the United States District Court for the Eastern District of Missouri, alleging that Redtail has infringed, and continues to infringe, the Asserted Patents and the Asserted Copyrights ("the Missouri Lawsuit").

14. More specifically, Hoodlums claims that Redtail has infringed the Asserted Patents by making, using, selling, and offering for sale welding helmets embodying claims of the Asserted Patents, including allegedly, a red skull welding helmet.

15. Furthermore, Hoodlums claims that Redtail has in the past, and continues to infringe the Asserted Copyrights by, without authorization, selling welding helmets that are copies of the welding helmets protected under the Asserted Copyrights.

16. Redtail has in the past, and continues to manufacture and offer for sale various welding helmets, including a red skull welding helmet and a white skull welding helmet ("the Accused Products".)

17. An actual, justiciable controversy now exists between Plaintiff and Hoodlums relating to the Asserted Patents.

COUNT I

Declaration of Non-Infringement of the '260 Patent

18. Plaintiff incorporates by reference the allegations of paragraphs 1-17, as if fully set forth herein.

19. The manufacture, use, sale, offer for sale and/or importation of the Accused Products does not constitute infringement of the '260 patent.

20. Plaintiff is entitled to a declaratory judgment that manufacture, use, sale, offer for sale and/or importation of the Accused Products does not constitute infringement, either directly, contributorily, or by inducement, of any claim of the '260 patent, literally or under the doctrine of equivalents.

COUNT II

Declaration of Invalidity of the '972 Patent

21. Plaintiff incorporates by reference the allegations of paragraphs 1-20, as if fully set forth herein.

22. The '972 patent is invalid for failure to satisfy one or more of the requirements set forth in 35 U.S.C. § 1, *et seq.*, including one or more of the following: 35 U.S.C. §§102 and 103. More specifically, the '972 Patent is invalid under 35 U.S.C. §§102 and 103 over prior art disclosed and depicted in the '972 Patent, itself, particularly Figure 1 and Column 2, lines 3-19.

23. Plaintiff is entitled to a declaratory judgment that the '927 patent is invalid and/or unenforceable.

COUNT III

Declaration of noninfringement of the 970-096 Copyright

24. Plaintiff incorporates by reference the allegations of paragraphs 1-23, as if fully set forth herein.

25. The Accused Products manufactured and sold by Redtail are not reproductions or derivative works of the Copyrighted Work. Redtail's sale and distribution of the Accused Products does not infringe the 970-096 Copyright.

26. Plaintiff is entitled to a declaratory judgment that the Accused Products do not infringe the 970-096 Copyright.

COUNT IV

Declaration of noninfringement of the 1-024-536 Copyright

27. Plaintiff incorporates by reference the allegations of paragraphs 1-26, as if fully set forth herein.

28. The Accused Products manufactured and sold by Redtail are not reproductions or derivative works of the Copyrighted Work. Redtail's sale and distribution of the Accused Products does not infringe the 1-024-536 Copyright.

29. Plaintiff is entitled to a declaratory judgment that the Accused Products do not infringe the 1-024-536 Copyright.

COUNT V

Declaration of noninfringement of the 1-043-737 Copyright

30. Plaintiff incorporates by reference the allegations of paragraphs 1-29, as if fully set forth herein.

31. The Accused Products manufactured and sold by Redtail are not reproductions or derivative works of the Copyrighted Work. Redtail's sale and distribution of the Accused Products does not infringe the 1-043-737 Copyright.

32. Plaintiff is entitled to a declaratory judgment that the Accused Products do not infringe the 1-043-737 Copyright.

COUNT VI

Declaration of noninfringement of the 1-043-738 Copyright

33. Plaintiff incorporates by reference the allegations of paragraphs 1-32, as if fully set forth herein.

34. The Accused Products manufactured and sold by Redtail are not reproductions or derivative works of the Copyrighted Work. Redtail's sale and distribution of the Accused Products does not infringe the 1-043-738 Copyright.

35. Plaintiff is entitled to a declaratory judgment that the Accused Products do not infringe the 1-043-738 Copyright.

PRAYER FOR RELIEF

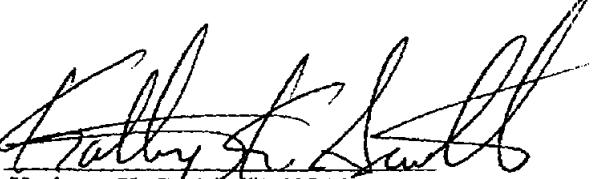
WHEREFORE, Plaintiff requests the following relief:

- A. A declaration that the '972 patent is invalid.
- B. A declaration that Plaintiff has not infringed, directly or indirectly, the '260 patent.
- C. A declaration that this case is exceptional pursuant to 35 U.S.C. § 285.
- D. Plaintiff be awarded its attorneys fees, costs and expenses under 35 U.S.C. §285.
- E. A declaration that Plaintiff has not infringed the 970-096 Copyright.
- F. A declaration that Plaintiff has not infringed the 1-0224-536 Copyright.
- G. A declaration that Plaintiff has not infringed the 1-043-737 Copyright.
- H. A declaration that Plaintiff has not infringed the 1-043-738 Copyright.
- I. Plaintiff be awarded its attorneys fees, costs and expenses under 17 U.S.C. §505.
- J. For all other relief that the Court deems just and proper.

DATED: October 7th, 2008

SHERRILL LAW OFFICES, PLLC

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